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IN THE

Supreme Court of the United States

October Term, 1963

RECORD NO. 294

CATHERINE CLINTON,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF RESPONDENT

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Richmond 19, Virginia

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SUPPLEMENTAL BRIEF ON BEHALF OF THE COMMONWEALTH OF VIRGINIA

Pursuant to the provisions of Section 5, Rule 41, of this Court, we file this supplemental brief.

On April 3, 1964, the date on which we sent our brief in chief to the Clerk of this Court, we received the following letter from the United States District Attorney for the Eastern District of Virginia, to-wit:

April 2, 1964

Mr. D. Gardner Tyler
Assistant Attorney General
1101 E. Broad Street
Richmond, Virginia

Re: Catherine Harms, a/k/a Catherine Clinton

Dear Mr. Gardner:

I have been advised by our Norfolk office that Catherine Harms, a/k/a Catherine Clinton came on for trial on November 6, 1958, and was found guilty by a jury and sentenced on July 20, 1959—joint sentence on 2nd, 3rd and 5th counts, fined $1,000.00, to stand committed for non-payment and committed to custody of the Attorney General for a term of 30 months. A Notice of Appeal was filed the same day. The Court of Appeals affirmed the decision on November 20, 1959. Writ of Certiorari denied by the Supreme Court on February 23, 1960.

I trust that the above information is helpful. If I can be of any further service, please advise.

Sincerely yours,

C. Vernon Spratley, Jr.
United States Attorney

/s/ Samuel W. Phillips
Assistant United States Attorney

Therefore, we wish to supplement our argument in reference to the reputation of the petitioner, being an element in determining probable cause. The Norfolk police authorities

undoubtedly had knowledge of her reputation. This phase of our argument is covered in our brief in chief on pages 19 to 25. When the police authorities directed surveillance of petitioner's apartment, we can assume that they were familiar with the past activities of the petitioner; that she had operated houses of prostitution in Norfolk, Virginia, and had been convicted in the United States District Court for the Eastern District of Virginia for the violation of the statute commonly known as the "White Slave Traffic Act" (18 U. S. C., Section 2422) in July, 1959, when she received a term of thirty months and was fined $1,000.00. It was to this fine which witnesses Catherine Taylor and Helen Buckridge referred in their testimony. (R. 13, 19, 23). The petitioner was formerly Catherine Harms (R. 27). It was under that name (Catherine Louise Harms) she was convicted in the Federal Court. In that case, after the United States Court of Appeals for the Fourth Circuit affirmed her conviction (272 F. (2d) 478), she sought an appeal to the Honorable Court which was denied on February 23, 1960. The following is contained in the reports of this Court pertaining to said case:

> No. 602. Catherine Louise Harms, Petitioner, v. United States. 361 U. S. 961, 4 L ed 2d 543, 80 S Ct 590.
>
> February 23, 1960. Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, denied.
>
> Same case below, 272 F (2d) 478. Robert G. Doumar for petitioner.
>
> Solicitor General Rankin, Assistant Attorney General Malcolm R. Wilkey, and Beatrice Rosenberg, for the United States.

It is proper that this Court take judicial knowledge of its own records. It is well settled that an appellate court will take judicial notice of its own records. *Dimmick* v. *Tompkins,* 194 U. S. 540, 24 S. Ct. 780, 48 L. Ed. 1110; *Bienville Water Supply Co.* v. *Mobile,* 186 U. S. 212, 22 S. Ct. 820, 46 L. Ed. 1132; *Gauss* v. *Com.,* 141 Va. 440, 126 S.E. 1; *Fletcher* v. *Norfolk Newspapers,* (Va.), 239 F. (2d) 169.

The reputation of an accused may be considered as an element in determining probable cause *(Carrol* v. *United States,* 267 U. S. 132).

As the public records of this Court, as well as the lower federal court, showed that the petitioner had been convicted of the "White Slave Traffic Act" within a period of only twenty months from the time *certiorari* was denied by this Court, we submit that it is reasonable to assume that the police authorities of Norfolk knew of her past activities in this respect. This knowledge, coupled with the facts and circumstances gathered by the surveillance *before the use of the microphone* in the adjoining apartment would warrant a man of reasonable caution in the belief that a violation of the law of Virginia was being committed in the adjoining apartment by petitioner. We submit that this fulfills the requirement in determining probable cause. See, *Draper* v. *United States,* 358 U. S. 307, referred to in our brief on page 21.

By filing this supplemental brief, we do not desire to overemphasize this phase of our argument as we believe other phases thereof are of equal importance. There was no unlawful penetration of petitioner's premises. The evidence sought to be excluded (conversations overheard) is not necessary to establish the conviction of petitioner, there being nothing therein pertaining to the charge upon which

the petitioner was convicted, to-wit, receiving money from a prostitute.

However, we call this Court's attention to the prior conviction of the petitioner as we feel that we would be remiss in not doing so.

Respectfully submitted,

ROBERT Y. BUTTON
Attorney General

D. GARDINER TYLER
Assistant Attorney General

Supreme Court-State Library Building
Richmond 19, Virginia

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing Supplemental Brief on Behalf of Respondent to Calvin H. Childress, Esq., 342 Law Building, Norfolk 10, Virginia, Counsel of Record for the petitioner, by depositing the same in a United States post office mail box, with first class postage prepaid, addressed to said Counsel of Record for the petitioner, at his post office address hereinabove set forth, on this 17th day of April, 1964.

D. GARDINER TYLER
Assistant Attorney General

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SUPREME COURT OF THE UNITED STATES

No. 294.—October Term, 1963.

Catherine Clinton, Petitioner, *v.* State of Virginia.	On Writ of Certiorari to the Supreme Court of Appeals of Virginia.

[May 4, 1964.]

Per Curiam.

The motion to strike the supplemental brief on behalf of the respondent is denied. The judgment is reversed. *Silverman* v. *United States*, 365 U. S. 505; *Ker* v. *California*, 374 U. S. 23.

Mr. Justice Clark concurring: Since the Court finds that the "spiked" mike used by the police officers penetrated petitioner's premises sufficiently to be an actual trespass thereof, I join in the judgment.

Mr. Justice White dissents.